

Montana Water Court
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FILED
01/03/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43A-0594-R-2021
White, Eugene
9.00

IN THE WATER COURT OF THE STATE OF MONTANA
YELLOWSTONE DIVISION
SHIELDS RIVER BASIN 43A
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Chad T. Searle; Kristianne V. Searle

OBJECTOR: Chad T. Searle

CASE 43A-0594-R-2021
43A 42507-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The above captioned claim appeared in the Preliminary Decree for Basin 43A. The claim is owned by Chad T. and Kristianne V. Searle. Claim 43A 42507-00 received a self-objection stating that the flow rate reduction by the DNRC was done in error and also received an issue remark during the DNRC's claims reexamination.

The claim was consolidated into Case 43A-0594-R-2021 to resolve the self-objection and issue remark.

FINDINGS OF FACT

1. Claim 43A 42507-00 appeared in the Preliminary Decree as an irrigation claim. Claim 43A 42507-00 received the following issue remark:

THE NOVEMBER 13, 1995, AFFIDAVIT OF THE CLAIMANT INDICATES THAT THE POINT OF DIVERSION IS IN THE NESWNW OF SEC 20, TWP 03N, RGE 09E.

2. On November 10, 2021, the Court consolidated the claim and set a filing deadline for the Claimants/Objector to file information and evidence addressing and resolving the self-objection and issue remark. This initial filing deadline was followed by an Order to Show Cause why the above-listed modification should not be made to the point of diversion for claim 43A 42507-00. The Claimants/Objector filed a *Notice of Substitution of Counsel and Request for Extension of Time* on April 20, 2022, the first of three requests for extension granted by the Court.

3. On August 23, 2022, claimant Kristianne Searle and claimant/objector Chad Searle filed a *Notice of Proposed Corrections and Filing of Additional Information*. The *Notice* states that the point of diversion legal land description for claim 43A 42507-00 should be changed to NESWNW of Sec 20, Twp 3N, Rge 9E as stated in the issue remark and the 1995 affidavit of Barbara B. Boyd.

4. The *Notice* also addresses the Mr. Searle's self-objection stating that reduction in flow rate made to claim 43A 42507-00 by the DNRC was in error. Further, the *Notice* argues that the Statement of Claim was originally for 100 miner's inches or 2.50 cfs and that that value for the flow rate element was corroborated by the 1981 affidavit of then claimants Franklin L. and Barbara B. Boyd which was attached to the

Notice. Lastly, the *Notice* asserts that if the Court applies the proposed modifications, the self-objection and issue remark would be resolved.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.
2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.
3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.
4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).
5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.
6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.
7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.
8. If a claimant agrees to reduce or limit a claim, the Water Court may accept the reduction or limitation without reviewing further evidence, unless an unresolved issue remark remains. Rule 17(c), W.R.Adj.R.

CONCLUSIONS OF LAW

1. The evidence in the record is sufficient to resolve the self-objection and issue remark placed on the above-captioned claim.

2. Based on the information contained in the Claimants/Objector's *Notice*, along with the attached affidavits, the point of diversion legal land description should be modified as described in Finding of Fact No. 3, and the flow rate element should be restored to 2.5cfs. The self-objection and the issue remark should be considered resolved and the issue remark removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
SHIELDS RIVER
BASIN 43A**

Water Right Number: 43A 42507-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: CHAD T SEARLE
PO BOX 708
EDEN, UT 84310 0708

KRISTIANNE V SEARLE
PO BOX 708
EDEN, UT 84310 0708

Priority Date: MAY 1, 1964
Type of Historical Right: USE
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 2.50 CFS

THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO 17 GPM PER ACRE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 25.00

Source Name: UNNAMED TRIBUTARY OF SHIELDS RIVER
Source Type: SURFACE WATER

SOURCE IS IDENTIFIED AS A SLOUGH WHICH IS FED BY THE SHIELDS RIVER DURING SPRING RUNOFF.

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESWNW	20	3N	9E	PARK

Period of Diversion: MAY 1 TO OCTOBER 1
Diversion Means: HEADGATE
Period of Use: MAY 1 TO OCTOBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	25.00		W2SW	20	3N	9E	PARK
Total:	25.00						